

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROXANNE ARI,

No. C 10-0893 WHA (PR)

Petitioner,

**ORDER OF DISMISSAL; DENYING  
APPOINTMENT OF COUNSEL;  
GRANTING LEAVE TO PROCEED  
IN FORMA PAUPERIS**

v.

MARY LATTIMORE,

Respondent.

(Docket Nos. 2 & 3)

**INTRODUCTION**

Petitioner, a California prisoner currently incarcerated at the Central California Women's Facility in Chowchilla, California, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. She has applied for leave to proceed in forma pauperis and requested appointment of counsel.

**STATEMENT**

In 1991, a jury in Alameda County Superior Court convicted petitioner of murder. The trial court sentenced her to a term of nineteen years to life in state prison. Her appeals to the California Court of Appeal and the California Supreme Court were denied.

**ANALYSIS**

**A. STANDARD OF REVIEW**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in

1 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. 2254(a); *Rose*  
2 *v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading  
3 requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ  
4 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state  
5 court must "specify all the grounds for relief which are available to the petitioner ... and shall  
6 set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of  
7 the Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254. "[N]otice' pleading is not  
8 sufficient, for the petition is expected to state facts that point to a 'real possibility of  
9 constitutional error.'" Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d  
10 688, 689 (1st Cir. 1970).

#### 11 **B. LEGAL CLAIMS**

12 As grounds for federal habeas relief, petitioner claims that the failure to transfer state  
13 court proceedings from Alameda County to Napa County violated her rights to due process and  
14 equal protection. A criminal defendant has a constitutional right to be tried in the state and  
15 district where the crime is alleged to have been committed. *United States v. Evans*, 62 F.3d  
16 1233, 1236 (9th Cir. 1995). According to the petition, the crime occurred in Alameda County,  
17 where the case was tried. Petitioner indicates that she was housed at some unidentified time at  
18 Napa State Hospital, which may be the reason she wanted the case transferred to Napa County.  
19 Petitioner cites no authority, however, and this court is aware of none, providing that a state  
20 court's failure to transfer criminal proceedings away from the county in which the crime was  
21 alleged to have been committed to another county implicates the defendant's rights to due  
22 process or equal protection. Petitioner's citations to state law regarding the transfer of state  
23 court proceedings does not provide an avenue for federal habeas relief, which is only available  
24 based on a violation of federal law. *See Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991)

25 As the allegations in the petition are somewhat unclear, it is possible that petitioner may  
26 be referring to the transfer of state court proceedings other than the criminal proceedings that  
27 led to her 1991 conviction. For example, petitioner makes a number of allegations regarding  
28 the placement of her son into foster care. Federal habeas relief is not available in any event

1 because a challenge to non-criminal state court proceedings does not implicate the fact or  
2 duration of her custody. *See Moran v. Sondalle*, 218 F.3d 647, 650-52 (7th Cir. 2000).  
3 Similarly, petitioner's allegations in the petition regarding the conditions of her confinement are  
4 not the proper subject of a federal habeas petition. *See Badea v. Cox*, 931 F.2d 573, 574 (9th  
5 Cir. 1991) (civil rights action is proper method of challenging conditions of confinement);  
6 *Crawford v. Bell*, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas  
7 petition on basis that challenges to terms and conditions of confinement must be brought in civil  
8 rights complaint).

9 Accordingly, the petition will be dismissed for failure to state a cognizable basis for  
10 federal habeas relief.

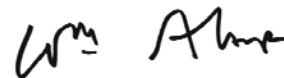
### 11 CONCLUSION

12 For the foregoing reasons, the case is **DISMISSED**. Petitioner's request for appointment  
13 of counsel (docket number 3) is **DENIED**. Petitioner's application to proceed in forma pauperis  
14 (docket number 2) is **GRANTED** due to petitioner's lack of funds.

15 The clerk shall close the file.

16 **IT IS SO ORDERED.**

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18 Dated: March 31, 2010.



19 WILLIAM ALSUP  
20 UNITED STATES DISTRICT JUDGE  
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**United States District Court**

For the Northern District of California

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